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I. Jurisdiction: A) The jurisdiction of this Court is invoked under *28 U.S.C. § 1651(a).* The case was originally filed on March 12, 2002. (App. C-10). Petitioner timely filed petitions for review, and the court below entered its final order on April 6, 2005, dismissing the case for lack of jurisdiction. *Article III, § 2 of the U.S. Const.* (E at 1). [1]

B) The Petitioner, who was a 21+-year-tenured former judiciary civil-service employee, was retaliatorily fired by the employing office after Petitioner filed an anti discrimination complaint under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e)). Although the case had been through the administrative process, the case was never reviewed on its entirety, never considered substantial material evidence to substantiate the legality of all allegations, never considered the merits of the case, and most of all, was never given the opportunity for an impartial judicial review, which compromised and jeopardized

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[1] Appendix ___ at ___ will be cited as ("letter & no. at page no.")

Petitioner's entitlement to vested federal employment benefits. (A-1, A-7, A 14-18). Because adequate relief cannot be obtained from any other court, the writ will be in aid of the Court's appellate jurisdiction since the Merit Systems Protection Board ("Board") and the courts below had decided a significant federal question that has imperative public importance, especially to the tenured federal employees of the judiciary. *Article III, § 2 of the Constitution; Amendment XIV § 1 of the Constitution; 28 U.S.C § 1651(a). (E at 1).*

II. Statement of the Case: A) Title VII of the Civil Rights Act of 1964 Standard. This case involves the appropriate standard for cases of intentional discrimination under *Title VII of the Civil Rights Act of 1964.* The federal government, which is the largest employer in the nation, will be affected by the outcome of this case in its dealings with the federal judiciary employees' discrimination complaints. *2 U.S.C. § 1434; 42 U.S.C. § 2000e et seq.* (E at 2, at 9).

B) Merits. On the merits, this case presents the question whether the Petitioner is entitled for relief on damages sustained, due to allegations of intentional

discrimination and disparate treatment because of non promotion on several instances for many years. Petitioner originally and timely filed the case for violation of *Title VII of the Civil Rights Act of 1964* on the basis of race, national origin, color, age, and sex. Other alleged federal employment violations: 1) employing office engaged in unlawful employment practice by engaging in a wide range of prohibited personnel practice several times; 2) retaliation; 3) reprisal; 4) hostile work environment; 5) work harassment via computer impeding Petitioner's work; 6) Federal Medical Leave Act (FMLA); 7) abuse of discretionary authority affecting terms, conditions, and privileges of employment; 8) continuing retaliatory actions while Petitioner was engaged in federally protected activity; 9) retaliatory termination; and 10) violation of due process right of the Constitution. (See C-9). *Title VII of the Civil Rights Act of 1964; Civil Rights Act as Amended in 1991 section 102(b) of Title VII; 42 U.S.C. § 2000e et. seq.*; Amend. IV; § 1

III. Background: A) Case and Petitioner's Background. Pro Se Petitioner, Evelyn L. Johnson ("Petitioner"), a 52-year-old female former federal government employee, of Asian

descent, was formerly employed by the Staff Attorneys' Office (SAO), Eleventh Circuit U.S. Court of Appeals. Petitioner filed a discrimination and disparate treatment complaint under Title VII on March 12, 2002, through the employing office's Employment Dispute Resolution (EDR) Plan when she was denied the position to which she was appointed, to a higher grade and its corresponding benefits, not once, but several times. Ten days after filing the complaint, Petitioner was subjected to numerous retaliatory actions, harassment, and hostile work environment. [2] *2 U.S.C. § 1317.* (Appendix generally). The retaliatory actions continued through the day the employing office retaliatorily terminated Petitioner's tenured (21+ years, 14 ½ years of which were spent with the employing office, (SAO)) federal employment on June 20, 2003, without good cause and against her will. (A 13-20; B 1-10; C 1-11). The Eleventh Circuit Court of Appeals dismissed the case on procedural grounds, and the MSPB Board ("Board") and the Federal Circuit Court of Appeals dismissed the case for lack of

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[2] Complete record substantiating the legality of all allegations in the complaint are located in 12 folders, under the custody of the clerk, U.S. Court of appeals for the Federal Circuit.

jurisdiction.

B) Employing Office's Reason for the Retaliatory Termination. This case does not involve merely involuntary termination due to SAO's allegations of *"insubordinate behavior, unsatisfactory work, and inappropriate conduct in the discharge of responsibilities."* (Id.). The employer's allegations, which were supported by Petitioner's evidence, were after-the-fact justifications, documenting Petitioner's impending involuntary/retaliatory termination while the Petitioner was involved in federally protected activity. Dates on the documentary evidence Respondents had provided will confirm the Petitioner's allegations that Respondents manufactured those papers while Petitioner was involved in the EDR process, in retaliation to Petitioner's filing of the EDR complaint.[3] This case involves convoluted, inextricably-intertwined facts, federal employment issues violating anti discrimination law, violation of other federal employment statutes, and protection of Petitioner's vested federal employment rights. *2 U.S.C. §§ 1317, 1434.* (E at 2).

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[3] Compare ROA Vol. 4 and App. D, Respondents' Exhibits, to Petitioner's ROA Vols. 1-12 and Appendix generally.

C) Petitions for Review with the Merit Systems Protection Board ("MSPB"), MSPB Board ("Board"), and Federal Circuit Court of Appeals ("Federal Circuit"): 1) Timeliness Petition for Review with the Board. Petitioner timely filed a petition for review (captioned Evelyn L. Johnson, Petitioner v. Administrative Office of the United States Courts ("AO"), Respondent, with the full Board on November 5, 2003 (A-9). On December 4, 2003, the Agency, through its counsel, Susan Kattan, filed a response to the Board recommending to dismiss the appeal for lack of jurisdiction. On July 12, 2004, through its Clerk, the full Board vacated and dismissed (A-7) the case for lack of jurisdiction MSPB's initial decision of October 8, 2003 (A-8), without addressing the merits of the case. (A 7-8).

2) Timeliness Petition for Review with the Federal Circuit Court of Appeals. Petitioner timely filed a petition for review with the Federal Circuit on September 9, 2004. (A-13; A-11; A-12 at 2-3; A-18). On November 9, 2004, the Agency (AO), through its counsel, Phyllis Jo Baunach, from the Department of Justice Civil Division, filed a "Motion to Recaption" (A-11) the case to be captioned "Evelyn L.

Johnson v. MSPB," to the Federal Circuit Court of Appeals stating that "[t]he employing agency is designated as the respondent when the Board reaches the merits of the underlying case." (A-12 at 2). On November 18, 2004, the Federal Circuit Court of Appeals granted the motion (A-12 at 3). On December 20, 2004, the now Respondent MSPB, through its counsel filed an informal brief (App. A-6), but was rejected by the Federal Circuit for untimeliness. MSPB's counsel filed a "Motion for Leave to File Brief Out of Time," on December 30, 2004 (A-5), Petitioner objected (A-4), but the motion was granted for the MSPB on January 26, 2005 (A-3). Under Fed.Cir.R. 15(c)(2), the Board's counsel contended that, *"Ms. Johnson stated that she was seeking only review of the Board's dismissal of her case for lack of jurisdiction."* (A-6 ¶5 at 13-14; compare, A-12, 17). Petitioner argues she included a continuation page to the form, which Petitioner avers that *"this case has not been reviewed on its entirety, on its merits, and was never given an opportunity for an appropriate and impartial judicial review."* [4] (A-13, 17). Petitioner seeks

[4] Petitioner's Fed.Cir.R.15(c) Statement Concerning Discrimination Form and its continuation page (A-13), MSPB Appeal Form (A-17), which identified all outstanding issues and facts, and was filed at the outset of filing this case with the MSPB on September 9, 2003.

review of the case on its entirety with the Federal Circuit, as directed by the Board's Order. Compare discrepancy on Board's final decision (A-7 at 9 ¶ 11) and AO's motion to recaption (A-11 at 3), and Federal Circuit Order (A-12). On April 6, 2005, the Federal Circuit rehashed the Board's decision, was diverted without consideration of the merits and affirmed the Board's decision (A-1, A 6-7 & A-19; compare with A-12, *"The employing agency is designated as the respondent when the Board reaches the merits of the underlying case."*)

D) Handling and Processing of the Case. The Court will find the manner in which the courts below and the Board handled and processed this case, and how they arrived at their judgment of dismissing the appeal for lack of jurisdiction. *"The respondent [agency through its counsel] and the Board agree that the MSPB's dismissal of Ms. Johnson's appeal for lack of jurisdiction is not a final order or decision on the merits of the underlying personnel action, 5 U.S.C. § 7703(a)(2)."* (A-11 at 3). *"The employing agency is designated as the respondent when the Board reaches the merits of the underlying case."* 2 U.S.C. § 1317. (A-12 at 2-3).

E) Petitioner's Allegations. The employing office, Staff Attorneys' Office ("SAO"), Eleventh Circuit Court of Appeals, twisted facts and issues, picked and chose the issue they wanted to address, without addressing true issues and allegations in the case. Petitioner asserted that due to the complex and serious nature of the case, the belligerent and reckless actions of the Respondents, the courts below and the Board's decision compromised and jeopardized the integrity and ethical conduct of the judicial system. (A-1, A-7, A-9, A 11-12, A 14-20). *Amend. XIV*. What SAO has done to the Petitioner was wrong, unlawful, malicious, and willful with evil intent that jeopardized Petitioner's vested federal employment entitlement to employee benefits, i.e., health and life insurance, components of retirement under Federal Employees Retirement System (FERS), i.e., TSP, social security, and federal retirement fund, etc. 5 U.S.C. §§ 8331, 8347(d)(1)-(2), 8461(e)(1). *Amendment XIV § 1 of the U.S. Constitution; 2 U.S.C. § 1434.* (E at 1-2).

F) Material Evidence. Petitioner filed material evidence and proved the case by a preponderance of evidence. (ROA, Vols. 1-12; Appendix). The lower courts and the full

Board's actions, however, showed not only unfair judgment but also abuse of power and authority, and manifested injustice.

G) Petitioner's Due Process Right. Petitioner also alleged violation of her due process constitutional right due to inappropriate handling and processing of Petitioner's 2003 EDR/EEO complaint she on July 16, 2003, (B 1-10). It was the retaliatory action, which was in retaliation to her filing of 2002 EDR complaint. (A 14-19). The employing office disposed of the entire employment and discrimination complaint at the December 8, 2003, hearing without appropriate notice to the Petitioner, which constitutes violation of the Petitioner's due process right. *Amendment XIV, § 1, U.S. Constitution.* (ROA Vol. 3, Pet.'s Motions; A 14-19).

IV. Argument: **A)** 2003 EDR Complaint—Retaliatory Termination Due to the Filing of the 2002 EDR Complaint.

1) Title VII of the Civil Rights Act of 1964. The courts below and Board erred in summarily dismissing the intentional discrimination and disparate treatment complaint under Title VII for lack of jurisdiction. (A-1; A 6-7, A-11, A-19;

compare with A-12 at 2). Petitioner brought the action under *Title VII of the Civil Rights Act of 1964* of continuing intentional discrimination and disparate treatment, due to violation of anti discrimination law, reprisal, continuing retaliatory actions while the Petitioner was engaged in protected activity, prohibited personnel practice such as non promotion, violation of her due process right, and involuntary/retaliatory termination. *42 U.S.C. § 2000e et seq.* Petitioner showed by a preponderance of evidence that she was engaged in protected activity. 2 *U.S.C. §§ 1317, 1434.* Petitioner established that she made non frivolous allegations that she was affected by the prohibited personnel actions and sustained irreparable, catastrophic tangible and intangible damages. *42 U.S.C. § 1981a(a)(1).* (E at 9). Due to the novel nature and seriousness of the offense, the courts below and the Board failed to demonstrate that a judicial employee is explicitly without legal protection from the merit systems appeal process. *Title VII Civil Rights Act of 1964 et seq.; 42 U.S.C. § 2000e et seq; 2 U.S.C. §§ 1317, 1434.* (A-C, E-G, and ROA on appeal). Petitioner met her burden of establishing Board jurisdiction under the *Civil Rights Act of*

1964 and is protected by an appeal right to the Board of her claim of intentional discrimination, which violated the "terms, conditions, and privileges" of her federal employment. *42 U.S.C. § 2000e-5(g)(1); 5 U.S.C. § 706(k).* (E at 3, at 9-11).

2) Motion to Dismiss and Congressional Accountability Act of 1995. The agency moved to dismiss, and the Board agreed it did not have jurisdiction over the appeal. The courts below and the Board, however, have not addressed the Title VII intentional discrimination and disparate treatment and all other contentions at issue here. *42 U.S.C. § 2000e et seq.* (A-1, A-7, A-11, A 14-19; E). The court below, which affirmed the Board's decision, was error because the Board's authority exists with respect to the agency's express provisions by *Congress under the Congressional Accountability Act of 1995. 2 U.S.C. § 1302* (App. E at 1). Petitioner argues that the express determination of Congress under the Act affords legislative and judicial employees of their appeal rights to the Board. (A 15-19; E at 1). Petitioner also argues that the manner in which the employing office, the Board, and courts below handled and processed the case was prejudicial by dismissing

appeal for lack of jurisdiction, without reviewing the entire complaint and without addressing the merits of the complaint. Petitioner adversely infers the contents of the Appendix. Petitioner asserts that the employing office processed the complaint in bad faith, circumvented, and manipulated, which prejudiced the entire EDR process. 2 U.S.C. § 1434. (E at 2).

3) Competitive Service v. Excepted Service. The Board's case analysis, affirmed by the court below, was focused on the jurisdictional question whether the Petitioner meets the definition of "employee" asserting that *"the right to appeal an action to the Board is limited to persons who meet the definition of 'employee' set forth in 5 U.S.C. § 7511(a)(1),"* (F-8) and the definition of *"'competitive' service set forth in 5 U.S.C. § 2101(a)."* (E at 4). The Board, however, did not consider parallel federal statutes under federal civil service employment regulations, which the Petitioner cited and copies of exhibits provided. The Agency asserted that: (See Appendix E at 10).

The referenced quoted statement above was inaccurate and contradicted the Board's Opinion and Order

of July 12, 2004, because it was clear that the Board only considered the jurisdiction question referencing the Hartman case and rendered its final decision saying "This is the final decision of the MSPB in this Appeal. 5 CFR § 1201.113(c)." (A-7 at 9). *5 U.S.C. § 7701(c)(2).* (App. E at 5, at 16). The appellate court made a clearly erroneous decision when it upheld the Board's decision. (App. A-1, A-7, ¶¶ 7, 8, & 11).

Furthermore, the Federal Circuit's analysis states that "[w]e find no error in the Board's interpretation of 'competitive service.' The term 'competitive service' is defined in **5 U.S.C. § 2102** as consisting of, inter alia, 'civil service positions in the executive branch which specifically included in the competitive service statute. Id. § 2102(a)(2).'" (A-1 at 6).

The Board and the Federal Circuit Court of Appeals were adamant in their position about their interpretation of "competitive service." While Petitioner provided copies of appendices to the Board and to the Federal Circuit to support her contention regarding the *"competitive and excepted services"* issue, they asserted that "[t]he petitioner has not cited and we have not found any statute that places her

position in the competitive service[,]"(A-1 at 6), they rejected and/or ignored all parallel statutes and federal civil service regulations Petitioner had cited, with copies of appendices provided. The laws, statutes, federal civil service rules and regulations Petitioner had cited were clear. *[Cite: 5CFR212.101] (1-1-05 Ed.) Part 212 – Competitive Service and Competitive Status*, Sec. 212.101 Definitions, In this chapter states:

> **(a) Competitive service has the meaning given that term by section 2102 of title 5, United States Code, and includes:**
> (1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and
> **(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute. . . .**

5 U.S.C. § 2102(a)(2). (See also, A-1 at 5, F). Furthermore, under *5 U.S.C. § 212.301*, this chapter defines:

> **competitive status [as] an individual's basic eligibility for noncompetitive assignment to a competitive position. *Competitive status is acquired automatically by completion of a probationary period under a career-conditional or career appointment, ...***

Petitioner, who was a career competitive-status transferee from the Veterans Administration, an agency under the executive branch, asserted that under *5 CFR Ch. 1, page 154 (1-1-05 Ed.) Subpart E—Career Employment by Transfer, § 315.501 of the CFR states:*

> **Subject to part 335 of this chapter, an agency may appoint by transfer to a competitive service position, without a break in service of a single workday, a current career or career-conditional employee of another agency.**

5 CFR § *315.501. [60 FR 53504, Oct. 16, 1995].* Likewise, being a tenured former federal employee, *5 CFR § 315.502* defines tenure on transfer as: (see Appendix E).

This regulation clearly identifies Petitioner's employment status. Similarly, *5 U.S.C. § 212.301, § 315.503* defines, "*an employee acquires a competitive status automatically on completion of probation.*" (See A-8 at 8-9, Personnel Action for Petitioner when transferred from the VA). The Federal Circuit Court of Appeals affirming the Board's final decision, therefore, erred in its position that the Board lacked jurisdiction over Petitioner's appeal because the Petitioner was under "'excepted service," not 'competitive

service of all positions in the executive branch" because she had established already her employment status. (App. E; ROA Vol. 2, Tab 12).

4) Definition of "Agency," "Executive and Judicial Branches of the Federal government," and "Employee." The agency, court below, and the Board's assertion that the *"Board lack jurisdiction over the appeal because the Petitioner is an employee of the judicial branch and does not have Board appeal rights under 5 U.S.C. § 7511(a)"* was clear error. (F-8). Furthermore, the Federal Circuit, in its final decision says, "[b]ecause the Board correctly concluded that Johnson did not come within any of the categories covered by the definition of "employee" under 5 U.S.C. § 7511, we affirm the Board's dismissal of her appeal for lack of jurisdiction." (A-1 at 2).

The Board and its counsel and court below clearly erred in interpreting the definition of *"employee,"* asserting that the Petitioner did not meet the definition of *"employee,"* and that the Board lacked jurisdiction. The Board and court below asserted that one of the ways to meet the statutory definition of *"employee," ". . . is to be an individual in the competitive service who has completed a probationary period*

or trial period under an initial appointment or who has completed one year of current continuous service under other than a temporary appointment limited to one year or less. 5 U.S.C. § 7511(a)(1)(A)." (A-7 ¶ 6 at 6; A-1 at 4; A-12; E). As cited and established above, Petitioner's employment status was never an issue. Although Petitioner had already established and met the definition of an "employee" and "competitive service" status, here, Petitioner argues that under the judiciary provisions of *AOUSC Model EDR Plan* (F-2, where the Eleventh Circuit Court EDR Plan was modeled, F-6), which was adopted and approved by the Judicial Conference of the U.S. in March 1997, Petitioner also met the definition of *"employee."* Under Chapter 1, *Section 1, Preamble, and Section 2, Scope of Coverage,* of the Agency EDR Plan explain who are covered by the EDR Plan. *AOUSC Model EDR Plan; 2 U.S.C. § 1302 (Congressional Accountability Act of 1995); 2 U.S.C. §* 1434 (E at 1-2; F 2-6).

The definition of *"employee"* under the Agency and court's EDR Plan *". . . includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees except as provided below.*

. . . ." The term "employing office' includes all offices of the United States courts of appeals. . . including the office of . . . staff attorneys. . . ." The term "court' refers to the appropriate court (appeals . . .) in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint. . . ." (emphasis). Petitioner has satisfied the statutory requirement on the definition of *"agency"* and *"employee"* as well. *5 C.F.R. § 212.101.* (E ; F 2-6).

5) Preponderance of Evidence Standard. Title 5 of CFR § 1201.56(2) states that the *"Petitioner has the burden of proof, by a preponderance of evidence . . . ." Title 5 U.S.C. § 7701(c)(2).* (E at 5). Petitioner asserts that due to the novel nature and complexity of this case, which involves major issues of circumstantial evidence under the prima facie doctrine, Petitioner submitted materials to meet the burden of proof by a preponderance of evidence. While Petitioner provided substantial material evidence to prove her case by a preponderance of evidence, the Board and courts below rejected and/or ignored those documents in rendering their final decision due to the Petitioner's employing office's

position in the judiciary. (See Fn 4 above). *Petitioner's material evidence, which was part of the record of the 2002 EDR/EEO complaint, showed same documents, as supporting evidence for Petitioner's allegations of continuing retaliatory actions, in retaliation to Petitioner's filing of the complaint, and same evidence provided by the Respondents.* 42 U.S.C. § 2000e-2 (A-17; C 3-4, 6-7, 9; ROA Vol. 5). The SAO did not provide written replies to all allegations. Evidence of bias and testimonies were inconsistent with, or contradicted by other evidence, provided by the Petitioner supporting her allegations. (ROA Vols. 5-6, Hearing Transcripts). The SAO's testimonies were inherently improbable. *42 U.S.C. § 2000e et seq.; 5 U.S.C. § 706(k).* (App. E at 3, at 9-11).

6) The Hartman case. The Board and the court below erred in relying on the Hartman case in finding that the Petitioner [Johnson] was not an *"employee"* under *Title 5 U.S.C. 7511(a)(1)* because Petitioner did not meet the definition of an *"employee." 5 U.S.C.§ 7511(a)(1).* The Hartman court found that it *"need not determine whether petitioner is an 'employee' for any purpose under Title 5,"* and affirmed the case on other ground cited by the Board that the

Petitioner [Hartman] was not entitled to Individual Rights of Action under whistleblower protection laws. Hartman v. MSPB, 77 F.3d 1378, 1380 (5th Cir. 1996); 5 U.S.C. §§ 1221(a); 2302(a)(2)(A). (E at 4-5).

Here, the Petitioner had provided citations and relevant discussions of the law, and the Petitioner's case is distinguishable from the Hartman case. It is important to note that *the court in* the Hartman *case did not find any statute* that a judicial employee's position *"was within the competitive service."* Hartman at 1379 n.3. Likewise, *Petitioner on Hartman failed to demonstrate by rule or statutes identifying the Petitioner [Hartman] as an Administrative Office of the U.S. Courts (AO) employee, and failed to provide evidence to support her allegation* that she met the definition of "employee" under the MSPB jurisdiction.

The Board, its counsel, and the agency's reliance on Hartman case was clearly erroneous because the AO is not a separate agency within the judicial branch. *The AO is the only administrative agency in the judicial branch that has the jurisdiction and administrative oversight responsibility to its*

employing offices such as appellate courts, district and bankruptcy courts, and U.S. probation offices in administering personnel and administrative matters regarding judicial employees nationwide. (F 2-7). *Furthermore, Petitioner asserts that because of her own inside knowledge due to her duties and responsibilities as personnelist for the employing office for the last 3 ½ years before her involuntary/retaliatory termination, she argues those employing offices, including the 11th Circuit SAO, operate through delegation of authority, and function on behalf, and under the direction of, the Director of the AO, the judicial agency. 28 U.S.C. §§ 602, 604.* (E at 5-6; F 2-7).

7) Intentional Discrimination and Disparate Treatment Standard. Title VII of the Civil Rights Act of 1964 prohibits employers from "*discriminat[ing] against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of her gender, race, color, religion, sex, or national origin.*" *42 U.S.C. § 2000e-2(a).* (E at 2, 6-7). Recognizing that direct evidence of discrimination often may not be available to prove intentional discrimination, this Court set forth a burden-shifting

framework for analyzing Title VII disparate treatment cases in McDonnell Douglas Corp. v. Green, 411, U.S. 792, 802 (1973). Under the McDonnell Douglas framework, once a plaintiff has established a prima facie case of discrimination, the burden of going forward with evidence shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse employment actions. If the employer presents evidence of a nondiscriminatory reason for its action, the plaintiff may then show that the employer's proffered explanation is not the true reason for the employment decision or that a discriminatory reason more likely than not motivated the employer. Id. at 804; see Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). The burden of persuasion remains with the plaintiff at all times. Burdine, 450 U.S. at 253.

The courts have used the McDonnell Douglas/Burdine pretext standard to resolve most Title VII cases for many years. It represents a *"sensible, orderly way to evaluate the evidence"* in a Title VII disparate treatment case, giving both plaintiff and defendant fair opportunities to litigate *"in light of common experience as it bears on the critical question of discrimination."* Furnco Construction Corp. v. Waters, 438

U.S. 567, 577 (1978). It also represents this Court's definitive construction of *"[t]he language of Title VII,"* which *"makes plain the purpose of Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens."* 411 U.S. at 800. The McDonnell Douglas framework, moreover, has gained wide acceptance, in cases alleging discrimination on the basis of *"race, color, religion, sex, or national origin."* Wherever it applies, the McDonnell Douglas framework at all times places the burden on the plaintiff to demonstrate that the adverse employment action was taken "because of" discriminatory motive.

8) Continuing Violation Doctrine. In 1996, Petitioner pursued her full promotion, evidenced by emails between Petitioner and Respondent. (F-1). Respondent gave Petitioner a reasonably believable explanation that Petitioner "had already received full promotion." Over the years, Petitioner continued to pursue a promotion. Although Respondent made promises, the paperwork was never done then gave some kind of explanation. Over those years,

Petitioner did not know the actions and intent were discriminatory. Petitioner only recognized the nature of conduct as discriminatory in light of occurring events, especially when Respondent gave secretly blanket promotion to support staff in February. As Petitioner testified at the 2002 hearing, she had no knowledge that those promotions will happen because of her experience in the past in her pursuit for promotion. Although it was Petitioner's job to prepare personnel actions, those promotion actions for the support staff were prepared by Karen Sinyard, as evidenced on Petitioner's file on record. Petitioner recognized the discriminatory intent when an organizational chart was placed on employees' boxes on March 1, 2002. Petitioner verified the new titles of the support staffs who were promoted, which precipitated Petitioner's cause of action to file the discrimination complaint.

The Supreme Court ruled that considered claims of retaliation and hostile work environment brought under Title VII of the Civil Rights held that "a hostile work environment claim should be reviewed in its entirety, so long as one of the events comprising it fell within the statute of limitations" and emphasized, "a hostile work environment claim contains

a series of separate acts collectively constitute one unlawful employment practice." National Railroad Passenger Corp. v. Morgan, 122 S.Ct. 2061, U.S. 4214 (2002). Further the Court states: (see E at 4).

B) 2003 Adverse Personnel Action—Involuntary Termination: **1)** At the October 29, 2003, Adverse Personnel Action hearing, the employing office produced after-the-fact justification, with willful and malicious intent, bad faith, and were pretexts to cover up true reasons of employing office's action. Dates on those after-the-fact justifications showed those documents were compiled while Petitioner was involved in protected activity. (Compare D to C; see also App. E at 10-11, for some relevant notes from Petitioner).

2) At the "Adverse Action Hearing" on October 29, 2003, Respondent's counsel (for the employing office) asked the court to *"make findings that [the case] was not in retaliation for the EDR complaint proceeding [and bring it] to a close, [although the hearing was Adverse Personnel Action not EDR complaint hearing]."* (A-18; B 3-4; C). The magistrate responded the "Court's intention to file anything in this case, so I am not going to issue an order sealing it because there is nothing that would be filed." *Amendment*

XIV, § 1, U.S. Const. (E at 1; ROA Vol. 5 at 175-76; ROA Vol. 3).

C) 2002 EDR Complaint—Intentional Discrimination and Disparate Treatment under Title VIIof the Civil Rights Act of 1964: 1) At the 2002 EDR hearing held on September 25-26, 2002, the employing office did not provide convincing explanation or evidence for its personnel actions but generally denied all complaint allegations. The hearing officer dismissed the appeal on procedural grounds. (See C generally). Petitioner provided preponderant evidence proofs that SAO's actions were unlawful, willful and malicious, in bad faith, which caused catastrophic, irreparable tangible and intangible damages to the Petitioner.

2. Prohibited personnel practices, under the *Civil Service Reform Act of 1978* provide that, *"federal agency heads, managers, supervisors, and personnel officials are responsible for preventing prohibited personnel practices, including reprisals, and for complying with and enforcing civil service laws, rules, and regulations." Civil Service Reform Act of 1978.* (E at 2). *2 U.S.C. § 1317; 5 U.S.C. §§ 2302(b)(1), 4303, 7512.* (E at 5, F-8). Petitioner discussed point-by-point events of her discrimination and retaliatory

actions' allegations and factual disputes with supporting documents on her Brief, discussions of relevant facts and law, civil service rules and regulations, and federal employment statutes. *2 U.S.C. § 1317.* (E at 1).

V. Reasons for Granting the Petition: A) The Staff Attorneys' Office (SAO), the courts below, and the agency had inherent conflict of interest because they were charged with self-regulation of discrimination complaints. The court below and the Board's order adversely affected Petitioner's rights. Adverse consequences in the courts' decision seriously affected *"terms, conditions, and privileges"* of Petitioner's federal employment. *5 U.S.C. § 706(k).* (E at 3). By exercising its supervisory power, the U.S. Supreme Court is the only way this controversy could be resolved. *Article III, § 2, U.S. Const.; 28 U.S.C. § 1651(a).* (E at 1, at 6).

B) The Federal Circuit Court's three-judge merits-panel had the jurisdiction, responsibility, and charged to follow the laws of the circuit and constitutional laws. While the merits-panel was obliged to follow the law and decide the case on its merits, the merits-panel has failed to address the merits of the case, failed to follow its own decisions, and

decisions of the U.S. Supreme Court. The Administrative Office of the U.S. Courts (AO), the U.S. government agency and administrative arm of the U.S. courts in the judiciary nationwide, is responsible for ensuring compliance with anti discrimination laws and to set an example for those agency cultures where discrimination is tolerated. *2 U.S.C. § 1434; 42 U.S.C.§ 2000e-2(b).* (Id.). (E at 2, at 10).

C) Congress has expressly provided all judiciary employees under the Congressional Accountability Act 1995 for disclosing information without fear of reprisal. This *Act* provides a voice to judiciary employees protection of their employment rights.*2 U.S.C. §§ 1302, 1434* (App. E-2).

D) Petitioner is experienced in many facets of federal personnel administration for many years in both executive and judicial branches of the government, which was one of the issues concerning this case. Dismissing the case for lack of jurisdiction in the Federal Circuit appellate court level, while Petitioner alleged continuing intentional discrimination under the Civil Rights Act, was wrong, and unlawful. Courts are charged with righting the wrong, have moral, ethical, and legal responsibility to all employees, including judiciary employees. Petitioner proved the case by

a preponderance of evidence. The courts below and the Board cannot knowingly and intentionally deceive the Petitioner by asserting they do not have jurisdiction over the case without reviewing the merits of the case, allegations of civil rights and constitutional law violations, to avoid accountability and liability. *Amendment XIV, § 1, U.S. Constitution; 42 § U.S.C. 2000e-2, (2)(b); 5 U.S.C.§ 706(k).* (E at 1, 3, at 6-7).

VI. ***Conclusion:*** Petitioner argues she should prevail because the courts below incorrectly interpreted and applied the governing constitutional law, rules, regulations, and federal statutes. Petitioner respectfully requests that the Court GRANT judicial review of the entire matter on its merits and enter JUDGMENT as a matter of law for the aggrieved Petitioner.

VII. **Damages and Relief Sought:** Petitioner filed damage award decisions under 5 U.S.C. § 5596. The Federal Circuit Court granted Petitioner's Motion for Relief (with attachments) on November 8, 2004 (A-12), and under the custody of the clerk of the Federal Circuit Court. Petitioner also included Appendix G and its attachments, which set forth relief specifics, which is also part of the Appendix. Petitioner seeks full/make whole relief because of the extraordinary circumstances on this case. (**See App. G**).

Respectfully submitted,

30 Aug 2005
Date

Evelyn L. Johnson
Pro se Petitioner
6241 S. Skyline Drive
Douglasville, GA 30135

Phone: 770-489-0343

(1)

NO. 04-3452

05-509 JUL 6 2005

OFFICE OF THE CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

In Re: Evelyn L. Johnson,

Petitioner.

ON PETITION

FOR AN EXTRAORDINARY WRIT

OF MANDAMUS

AND/OR

PROHIBITION

APPENDIX

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30 Aug 2005
Date

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Pro Se Petitioner
6241 S. Skyline Drive
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[VOLUME 1 OF 2]

APPENDIX — A

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United States Court of Appeals

for the Federal Circuit

04-3452

EVELYN L. JOHNSON,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

DECIDED: April 6, 2005

Before NEWMAN, LOURIE, AND LINN, Circuit Judges.

PER CURIAM.

Evelyn Johnson ("Johnson") seeks review of the final decision of the Merit Systems Protection Board ("Board") dismissing for lack of jurisdiction her appeal of her removal from the position of Human Resources Coordinator in the

Staff Attorneys' Office at the United States Court of Appeals for the Eleventh Circuit. See Johnson v. Admin Office of the U.S. Courts, No. AT-0752-03-0934-I-1 (M.S.P.B. July 12, 2004) ("Final Decision"). Because the Board correctly concluded that Johnson did not come within any of the categories covered by the definition of "employee" under 5 U.S.C. § 7511, we affirm the Board's dismissal of her appeal for lack of jurisdiction.

BACKGROUND

Johnson began her employment at the United States Court of Appeals for the Eleventh Circuit as a Court Secretary. She was subsequently promoted to the position of Human Resources Coordinator in the Staff Attorneys' Office. On June 20, 2003, Johnson was notified of the termination of her position effective June 27, 2003. She filed an appeal of her termination with the Board. Shortly thereafter, she informed the Board that she wished to withdraw her appeal. Her appeal was dismissed on October 9, 2003. See Johnson v. Admin Office of the U.S. Courts, No. AT-0752-03-0934-I-1 (M.S.P.B. October 9, 2003) ("Initial").

leave to file a second supplemental brief. The Board moves for leave to file its brief out of time. Johnson opposes.

In seeking review of our prior order, Johnson appears to be under the mistaken impression that our order naming the Board as respondent was equivalent to "[r]emanding or transferring this case to the Board for Review on its merits." Review of the Board's final decision will proceed in this court, notwithstanding the fact that an attorney for Board, as opposed to the agency, will be defending the Board's decision. The court's reforming the caption will not impact Johnson's rights and, as explained in the earlier order, is mandated by law in these circumstances. See 5 U.S.C. § 7703(a)(2)l; Spruill v. Merit Sys. Protection Bd., 978 F.2d 679, 686 (Fed. Cir. 1992) (holding that the Board is the proper respondent where the Board's ruling is limited to juriadictional determination). Thus, reconsideration of the order reforming the caption is not warranted.

Because Johnson has already filed a lengthy supplemental brief, we conclude that filing of a second supplemental brief is not warranted. However, Johnson may